## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASON JACOBS : CIVIL ACTION

:

V.

.

IMPACT PROJECT, INC., et al. : NO. 04-2074

## **MEMORANDUM**

Bartle, J. June 16, 2005

Plaintiff, Jason Jacobs as the administrator of the estate of his brother Matthew D. Jacobs has brought an action arising from the tragic death of Matthew Jacobs, a twelve-year-old boy. The complaint alleges that Matthew was struck and killed by a moving locomotive in Amity Township, Berks County, Pennsylvania. The defendants are: (1) Impact Project, Inc. ("Impact"), a private company that administered the foster care placement of Matthew; (2) the Berks County Department of Child and Youth Services ("DCYS"); (3) Susan Hoke, the caseworker at Berks County DCYS who was assigned to Matthew's case; and (4) Thomas and Kathy Sigafoos, the foster parents with whom Matthew was living at the time of his death. Plaintiff has brought claims in negligence against Impact and the Sigafooses.

The Sigafooses have moved for summary judgment on the ground that they are employees of Berks County DCYS and thus are protected from liability by governmental immunity under the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. §§ 8501, et seq. The Political Subdivision Tort Claims Act

requires a local agency to indemnify an employee for any judgment entered against the employee arising out of acts that are within the scope of that employee's duties. <u>Id.</u> § 8548(a). Under the Act, the employee may seek indemnification from the local agency when "it is judicially determined that an act of the employee caused the injury and such act was, or that the employee in good faith reasonably believed that such act was, within the scope of his office or duties." <u>Id.</u> Thus, the Act does not afford the Sigafooses immunity from suit even if they are employees of Berks County. It simply allows them to recover against Berks County if liable as employees in the underlying action.

The Sigafooses rely on <u>Patterson v. Lycoming County</u>, 815 A.2d 659 (Pa. Commw. Ct. 2002). In that case, liability had already been established against foster parents for the wrongful death of a child who had been placed in their care by the county, and the foster parents were seeking indemnification from the county under the Political Subdivision Tort Claims Act. Here, however, liability has not yet been established. Regardless of whether the Sigafooses are "employees" of Berks County for the purposes of seeking indemnification under the Political Subdivision Tort Claims Act, we find that it is premature to release them from the case when liability has not yet been determined.

The Sigafooses argue in the alternative that summary judgment is appropriate because plaintiff's claims against them are legally insufficient. <u>See</u> Fed. R. Civ. P. 56(c). We find

that genuine issues of material fact exist regarding plaintiff's claims against the Sigafooses. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Accordingly, we are denying the motion of the Sigafooses for summary judgment.

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## ORDER

AND NOW, this 16th day of June, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendants Thomas and Kathy Sigafoos for summary judgment is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

Τ.